IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL MISCELLANEOUS APPLICATION NO. 133 OF 2002.

Shri K.M. Lingamurthy,
r/o Flat No. G-2,
Jyotirling Apartments.
Durga Bhat, Ponda, Goa. ... Petitioner.

Versus

1. Shri Kamlakant Shankar Naik,
   Mestawada, Ponda, Goa.
2. Shri Deepak Yellapa Patil,
   Mestawada, Ponda, Goa.
3. Supdt. of Police,
   Police Head Quarters,
   North Goa, Panaji. ... Respondents.

Petitioner in person.

Coram: P.V. HARDAS, J.

Date: 19th September 2002.

ORAL JUDGMENT.

I have heard the petitioner in person. On the basis of the report of the petitioner, the present respondents 1 and 2 were prosecuted for an offence punishable under Section 325 read with Section 34 of the Indian Penal Code. The prosecution in support of its case examined 6 witnesses including the wife of the petitioner (P.W.2) as a direct eye witness to the incident. The learned Judicial Magistrate, First Class, Ponda, by Judgment dated 26th July 1999 acquitted the respondents 1 and 2 on the ground that the ingredients of the offence punishable under Section 325 had not been made out by the prosecution. Further, the learned trial Court had observed that the evidence of P.W.2, the was extremely doubtful. The learned

trial Court also observed that there is no evidence pin pointing the guilt of the respondents 1 and 2. The learned trial Court came to the conclusion that, in view of the various contradictions and omissions in the testimony of P.W.1, no conviction can be given on the solitary evidence of P.W.1..

2. Aggrieved by the Judgment and Order of the learned trial Court, the petitioner preferred Criminal Appeal before the Division Bench of this Court. Since the Criminal Appeal was barred by limitation, an application for condonation of delay was also filed. The Division Bench while examining the application for condonation of delay came to the conclusion that the appeal was not maintainable, but, however, directed the petitioner to file a revision before the District Court within a period of 4 weeks. The petitioner, therefore, filed the aforesaid Criminal Revision Application before the learned Additional Sessions Judge, Panaji, being Criminal Revision Application No. 32 of 2002. The learned revisional Court, after hearing the petitioner and the respondents 1 and 2 and after examining and appreciating the evidence of the prosecution, dismissed the Criminal Revision Application. The revisional Court came to the conclusion that since there were major contradictions in the evidence of P.W.1 vis-a-vis his statement in the

Court and his statement under Section 161 Criminal Procedure Code, no illegality was committed by the learned Magistrate and there was no reason for interference and, accordingly, dismissed the Criminal Revision Application.

3. The petitioner being aggrieved by the aforesaid Judgment of the learned Additional Sessions Judge, Panaji, dated 23rd April 2002, filed the present proceedings under Article 226 and 227 of the Constitution of India read with Section 482 of the Code of Criminal Procedure and has prayed for quashing the Order of the learned trial Court and the learned revisional Court. There is also a prayer for conviction of the respondents 1 and 2 for an offence punishable under Section 325 read with Section 34 of the Indian Penal Code.

4. Two Courts have concurrently found on appreciation of evidence that the offence against the respondents 1 and 2 has not been proved beyond reasonable doubt. Both the Courts have given reasons for arriving at the said finding and there is no perversity in the reasoning. Exercise of jurisdiction under Section 482 Criminal Procedure Code is to be resorted to only in exceptional cases. I have perused the Orders of the two Courts below and I do not find

any reason warranting interference under Articles 226 and 227 of the Constitution of India. Besides, neither under Articles 226 and 227 nor under Section 482 can a Court convert a finding of acquittal into conviction. In view of this, Criminal Miscellaneous Application is dismissed.

(P.V. HARDAS)
JUDGE.

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